

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION

IN RE:	§	
	§	
JAMES RAY LEONARD,	§	CASE NO. 02-10877-RLJ-13
	§	
DEBTOR.	§	

**MEMORANDUM OPINION AND ORDER**

Before the court is the motion filed by the Chapter 13 Trustee, Walter O'Cheskey, seeking a dismissal with prejudice of the Debtor's Chapter 13 case. The court has jurisdiction of this matter under 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). This Memorandum Opinion contains the court's findings of fact and conclusions of law. FED. R. BANKR. P. 7052.

The Trustee asserts that this case was filed in bad faith because the Debtor is, in effect, seeking a discharge of debts incurred while the Debtor was going through a prior Chapter 13 case. In this regard, the Debtor filed a prior Chapter 13 case in 1996. He obtained confirmation of his Chapter 13 plan, successfully completed the plan, and was granted a discharge in May, 2001.

The present case was filed October 21, 2002. The amended Schedule F reflects unsecured debts of \$15,820.36, of which all but \$148.73 is credit card debt. The following credit card debts were either incurred during Mr. Leonard's prior case or the credit card itself was obtained during the prior case: two Capital One cards, with balances of \$1,943.26 and \$581.22, respectively; First National credit card with a balance of \$564.66; Providian credit card with a balance of \$7,236.59.

Mr. Leonard has had the same job for over twenty-four years. His income in 2000 was \$25,301.45; in 2001 it was \$25,558.25; and through October of 2002, he had earned \$22,810.73. Mr. Leonard owns a 2001 Ford Taurus which secures a claim of Ford Motor Credit in the amount of \$17,163.80. He also lists a debt to Americredit in the amount of \$20,315 secured by a purchase money lien against a 2001 Dodge Ram 1500. The Taurus is claimed as exempt. The Dodge is not otherwise listed on his schedules, however, the court notes that two orders were entered on January 24, 2003, on Americredit's motion, granting relief in favor of Americredit against both Mr. Leonard as the debtor and against a co-debtor. Mr. Leonard's Chapter 13 plan, as most recently amended, anticipates a 7% dividend to unsecured creditors. In this regard, Mr. Leonard's proposed plan provides for payments of \$355 a month, which is the available amount after paying his monthly expenses. The monthly expenses include \$132 per month for a big screen television, \$120 a month for cable, and \$100 per month for telephone.

Mr. Leonard offered no explanation for having incurred the debts listed in his present case, other than mentioning that his wife has left him and that he no longer earns overtime pay.

On balance, Mr. Leonard's situation has remained constant over the years. He has the same job and his earnings have remained relatively constant. Unfortunately, his spending habits have also continued. He has continued to obtain and abuse credit cards and purchased two relatively new cars. He has also managed to accumulate a retirement plan of approximately \$78,000, which he has claimed as exempt.

Mr. Leonard offered no explanation or justification for having incurred substantial credit card debt. There is no evidence of a change in circumstance justifying his financial situation, such as a loss of

job, loss of income, severe illness resulting in catastrophic medical expenses, etc. Basically, it appears that before his prior bankruptcy case was completed, he essentially resumed prior bad habits. He now proposes another Chapter 13 case with a minimal payout to unsecured creditors.

The court is disturbed by the conduct of both Mr. Leonard and his creditors. Mr. Leonard apparently learned nothing from his prior experience in bankruptcy. By the same token, the continued extension of credit by his creditors, in light of his prior bankruptcy and given his income, appears foolhardy.

Mr. Leonard's conduct warrants a finding that this case was filed in bad faith, which can constitute "cause" to justify dismissal. *See In re Lilley*, 91 F.3d 491, 496 (3rd Cir. 1996); *Gier v. Farmers State Bank of Lucas, Kan. (In re Gier)*, 986 F.2d 1326, 1329 (10th Cir. 1993). However, the court is of the opinion that both Mr. Leonard and his creditors are better served by Mr. Leonard remaining in Chapter 13 and presenting a plan that provides a meaningful return to the unsecured creditors. The proposed plan is not confirmable, under the circumstances. His present expenses for a big screen television, for cable, and \$100 a month for his telephone are unacceptable.

The court will therefore deny the motion to dismiss without prejudice to the Trustee reurging the motion if appropriate. It is, therefore,

ORDERED that the relief requested by the Trustee's motion to dismiss is denied.

Signed April 25, 2003.

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ROBERT L. JONES  
UNITED STATES BANKRUPTCY JUDGE

The Clerk shall provide copies to:

Attorney for Debtor: Dan Wallis, Law Offices of Phil Black, 1290 S. Willis, Suite 222, Abilene, TX 79605; and

Chapter 13 Trustee: Walter R. O'Cheskey, 2575 S. Loop 289, Suite 103, Lubbock, TX 79423.